

Introduced by Senator Romero

February 22, 2005

An act to ~~add Section 94794 to amend Sections 94736, 94739, 94746, and 94960 of the Education Code, relating to private postsecondary education.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 767, as amended, Romero. Private postsecondary institutions: exemption from approval.

~~Existing~~

(1) *Existing* law, the Private Postsecondary and Vocational Education Reform Act of 1989 (private postsecondary act), generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. By its own terms, the act is repealed as of January 1, 2008.

~~Specific provisions of the (private postsecondary act), known as the Maxine Waters School Reform and Student Protection Act of 1989 (school reform act), generally provide procedures, remedies, and sanctions that apply in situations where students allege that they have suffered harm because of the actions of institutions to which the school reform act is applicable. Existing law exempts prescribed educational services from private postsecondary act, including certain services relating to the conferring of associate of occupational studies or associate of applied science degrees.~~

An existing provision of the act defines the terms “Occupational Associate Degree,” “Associate of Occupational Studies,” and “Associate of Applied Science” to mean an associate degree that may be awarded to students who complete an occupational program that provides preparation for employment in an occupational field, and specifies several types of associate degrees that are included within this definition. This

~~This bill would provide that no institution seeking approval or reapproval under the private postsecondary act shall be exempt from the school reform act by reason of the accreditation of that institution or one or more of its branches. The bill would further require that any institution, or branch of that institution, would lose an existing exemption if, the bureau determines that on or after January 1, 2003, the accrediting agency takes, or has taken, a negative action, as defined, against the institution, one or more of its branches, or a course or program of study offered by that institution specify that the AA or Associate Arts degree is included within this definition.~~

(2) An existing provision of the act specifies the types of institutions that are not included within the scope of the act, including institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges that are incorporated and lawfully operating as either public benefit corporations or for-profit institutions.

This bill would provide that, notwithstanding these provisions, these institutions are subject to the student and consumer protections and the bureau’s oversight and the requirements of the act with respect to all of the vocational programs of instruction offered by the institution to the extent these protections and requirements would otherwise apply, given the characteristics and particulars of that program of instruction.

(3) An existing provision of the act defines “vocational diploma program” as an educational program meeting specified criteria.

This bill would change that term to “vocational program,” and would specify that one of the criteria to be met by a “vocational program” would be met by the awarding of any of each category of degree listed in the act’s definition of “occupational associate degree.”

(4) An existing provision of the act requires the bureau to forward complaints to the Western Association of Schools and Colleges that

the bureau receives pertaining to institutions accredited by that association.

This bill would specify that the bureau would forward these complaints when it has no oversight responsibility for the programs of instruction or for the institution that is the subject of the complaint.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 94794 is added to the Education Code,~~
2 ~~to read:~~

3 ~~SECTION 1. Section 94736 of the Education Code is~~
4 ~~amended to read:~~

5 ~~94736. “Occupational Associate Degree,” “Associate of~~
6 ~~Occupational Studies,” or “Associate of Applied Science”~~
7 ~~designated by terms including, but not necessarily limited to,~~
8 ~~AOS (Associate Occupational Studies), AA (Associate Arts),~~
9 ~~AAS (Associate Applied Science), AST (Associate Specialist~~
10 ~~Technical), or ASB (Associate Specialist Business) means an~~
11 ~~associate degree that may be awarded to students who complete~~
12 ~~an occupational program that provides preparation for~~
13 ~~employment in an occupational field.~~

14 ~~SEC. 2. Section 94739 of the Education Code is amended to~~
15 ~~read:~~

16 ~~94739. (a) “Private postsecondary educational institution”~~
17 ~~means any person doing business in California that offers to~~
18 ~~provide or provides, for a tuition, fee, or other charge, any~~
19 ~~instruction, training, or education under any of the following~~
20 ~~circumstances:~~

21 ~~(1) A majority of the students to whom instruction, training, or~~
22 ~~education is provided during any 12-month period is obtained~~
23 ~~from, or on behalf of, students who have completed or terminated~~
24 ~~their secondary education or are beyond the age of compulsory~~
25 ~~high school attendance.~~

26 ~~(2) More than 50 percent of the revenue derived from~~
27 ~~providing instruction, training, or education during any 12-month~~
28 ~~period is obtained from, or on behalf of, students who have~~
29 ~~completed or terminated their secondary education or are beyond~~
30 ~~the age of compulsory high school attendance.~~

(3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(4) A substantial portion, as determined by the ~~council~~ *bureau*, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(b) The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the ~~12th~~ grade *12*.

(2) Institutions offering education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Institutions offering education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) Institutions offering continuing education where the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, trade, or job category.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, trade, or job category.

(C) A bona fide trade, business, or professional organization.

(6) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instruction in the principles of that church, religious denomination, or religious

1 organization, or to courses offered pursuant to Section 2789 of
2 the Business and Professions Code, and the diploma or degree is
3 limited to evidence of completion of that education, and the
4 meritorious recognition upon which any honorary degree is
5 conferred is limited to the principles of that church, religious
6 denomination, or religious organization. Institutions operating
7 under this paragraph shall offer degrees and diplomas only in the
8 beliefs and practices of the church, religious denomination, or
9 religious organization. The enactment of this paragraph expresses
10 the legislative intent that the state shall not involve itself in the
11 content of degree programs awarded by any institution operating
12 under this paragraph, as long as the institution awards degrees
13 and diplomas only in the beliefs and practices of the church,
14 religious denomination, or religious organization. Institutions
15 operating under this paragraph shall not award degrees in any
16 area of physical science. Any degree or diploma granted in any
17 area of study under these provisions shall contain on its face, in
18 the written description of the title of the degree being conferred,
19 a reference to the theological or religious aspect of the degree's
20 subject area. Degrees awarded under this paragraph shall reflect
21 the nature of the degree title, such as "associate of religious
22 studies," or "bachelor of religious studies," or "master of
23 divinity" or "doctor of divinity." The use of the degree titles
24 "associate of arts" or "associate of science," "bachelor of arts" or
25 "bachelor of science," "master of arts" or "master of science," or
26 "doctor of philosophy" or "Ph.D." shall only be awarded by
27 institutions approved to operate under Article 8 (commencing
28 with Section 94900) or meeting the requirements for an
29 exemption under Section 94750. The enactment of this paragraph
30 is intended to prevent any entity claiming to be a nonprofit
31 institution owned, controlled, and operated and maintained by a
32 bona fide church, religious denomination, or religious
33 organization comprised of multidenominational members of the
34 same well-recognized religion, lawfully operating as a nonprofit
35 religious corporation pursuant to Part 4 (commencing with
36 Section 9110) of Division 2 of Title 1 of the Corporations Code,
37 from marketing and granting degrees or diplomas that are
38 represented as being linked to their church, religious
39 denomination, or religious organization, but which, in reality, are
40 degrees in secular areas of study. An institution operating under

1 this paragraph shall file annually with the ~~council~~ bureau
2 evidence to demonstrate its status as a nonprofit religious
3 corporation under the Corporations Code. A college or university
4 operating under this paragraph shall file annually with the
5 ~~council~~ bureau evidence to demonstrate its status as a nonprofit
6 religious corporation under the Corporations Code.

7 (7) (A) Public institutions accredited by the Accrediting
8 Commission for Senior Colleges and Universities or the
9 Accrediting Commission for Community and Junior Colleges of
10 the Western Association of Schools and Colleges.

11 (B) Institutions accredited by the Accrediting Commission for
12 Senior Colleges and Universities or the Accrediting Commission
13 for Community and Junior Colleges of the Western Association
14 of Schools and Colleges that are incorporated and lawfully
15 operating as a nonprofit public benefit corporation pursuant to
16 Part 2 (commencing with Section 5110) of Division 2 of Title 1
17 of the Corporations Code and that are not managed by any entity
18 for profit.

19 (C) (i) For-profit institutions accredited by the Accrediting
20 Commission for Senior Colleges and Universities or the
21 Accrediting Commission for Community and Junior Colleges of
22 the Western Association of Schools and Colleges.

23 (ii) *Notwithstanding this subdivision, an institution that meets*
24 *the requirements of this subparagraph but also meets any of the*
25 *criteria of subdivision (a) shall be subject to the student and*
26 *consumer protections and the bureau's oversight and the*
27 *requirements of this chapter with respect to all of the vocational*
28 *programs of instruction offered by the institution to the extent*
29 *these protections and requirements would otherwise apply, given*
30 *the characteristics and particulars of that program of instruction.*

31 (D) (i) Institutions accredited by the Western Association of
32 Schools and Colleges that do not meet all of the criteria in
33 subparagraph (B) and that are incorporated and lawfully
34 operating as a nonprofit public benefit corporation pursuant to
35 Part 2 (commencing with Section 5110) of Division 2 of Title 1
36 of the Corporations Code, that have been in continuous operation
37 since April 15, 1997, and that are not managed by any entity for
38 profit. ~~Notwithstanding~~

39 (ii) *Notwithstanding this subdivision, institutions that meet the*
40 *criteria in this subparagraph shall be subject to Section 94831,*

1 ~~except subdivision (c) of that section, and Sections 94832,~~
2 ~~94834, 94838, and 94985~~ *an institution that meets the*
3 *requirements of this subparagraph but also meets any of the*
4 *criteria of subdivision (a) shall be subject to the student and*
5 *consumer protections and the bureau's oversight and the*
6 *requirements of this chapter with respect to all of the vocational*
7 *programs of instruction offered by the institution to the extent*
8 *these protections and requirements would otherwise apply, given*
9 *the characteristics and particulars of that program of instruction.*

10 (8) Institutions that exclusively offer programs that cost five
11 hundred dollars (\$500) or less.

12 *SEC. 3. Section 94746 of the Education Code is amended to*
13 *read:*

14 94746. "Vocational-diploma program" means an educational
15 program having all of the following characteristics:

16 (a) The educational program consists of a job-training program
17 or other instruction, training, or education that the institution
18 represents will lead to, fit, or prepare students for employment in
19 any occupation.

20 (b) The program is offered to students who do not possess a
21 bachelor's or graduate degree in the field of training.

22 (c) Students who complete all or a portion of the program are
23 awarded a diploma, certificate, or occupational associate degree,
24 *including, but not necessarily limited to, the diplomas,*
25 *certificates, and degrees listed in Section 94736.*

26 *SEC. 4. Section 94960 of the Education Code is amended to*
27 *read:*

28 94960. (a) (1) Any person claiming damage or loss as a
29 result of any act or practice by a postsecondary or vocational
30 educational institution or its agent, or both, that is a violation of
31 this chapter or of the regulations adopted pursuant to this chapter,
32 may file with the bureau a verified complaint against that
33 institution or its agent, or both.

34 ~~The~~

35 (2) *The* complaint shall set forth the alleged violation, and
36 shall contain any other information as may be required by the
37 bureau.

38 (b) (1) Pursuant to regulations that specify its procedures
39 regarding complaint handling and disclosure, the bureau shall
40 investigate any complaint, and document its findings and its

1 determination of the appropriate course of action and disposition
2 of the complaint.

3 (2) The bureau shall adopt regulations that specify its
4 procedures for complaint handling and complaint disclosure. The
5 bureau shall make every reasonable attempt to ensure that the
6 first public hearing on its proposed regulations is convened prior
7 to June 30, 2002. The requirements of this subdivision shall not
8 preclude the bureau from fulfilling its complaint handling
9 responsibilities pending adoption of the regulations.

10 (3) The regulations adopted pursuant to paragraph (2) shall
11 include, but not necessarily be limited to, both of the following:

12 (A) A procedure for handling the original student complaints
13 by mail that affords the institution that is the subject of the
14 complaint an opportunity to respond.

15 (B) Additional options, including teleconferencing and an
16 administrative law hearing and a complaint resolution hearing
17 conducted by the bureau program administrator or his or her
18 designee. Participation in this hearing shall not prevent any party
19 to the complaint from exercising any other means of redress
20 available under the law.

21 (4) Nothing in this section shall be construed to prevent a
22 complainant, institution, or the bureau from using additional
23 appeals that are available under state law.

24 (c) If, upon all the evidence at a hearing, the bureau finds that
25 an institution or its agent, or both, have engaged in, or are
26 engaging in, any act or practice that violates this chapter or the
27 regulations adopted pursuant to this chapter, the bureau shall
28 report that evidence to the Attorney General. The bureau, based
29 on its own investigation or the evidence adduced at a hearing, or
30 both, also may commence an action to revoke an institution's
31 approval to operate or an agent's permit.

32 (d) Complaints received by the bureau pertaining to
33 institutions accredited by the Western Association of Schools and
34 Colleges shall be forwarded to the association *when the bureau*
35 *has no oversight responsibility for the programs of instruction*
36 *that are the subjects of those complaints.* ~~Actions by the bureau~~
37 ~~relating to complaints against these institutions shall be limited to~~
38 ~~the transmittal of this information~~ *The bureau shall transmit to*
39 *the Western Association of Schools and Colleges any complaint*

1 *that is related to a program offered by an institution accredited*
2 *by that association that is exempt from the bureau's oversight.*

3 (e) A person entitled to bring an action for the recovery of
4 damages or other relief shall not be required to file a complaint
5 pursuant to this section, or to pursue or exhaust any
6 administrative process or remedy before bringing the action.

7 ~~94794. (a) Notwithstanding any other provision of this~~
8 ~~chapter, no institution seeking approval or reapproval under this~~
9 ~~chapter for itself or one or more of its branches shall be exempt~~
10 ~~from Article 7 (commencing with Section 94850) by reason of~~
11 ~~the accreditation of the institution or one or more of its branches.~~

12 ~~(b) (1) Any institution, or branch of an institution, shall lose an~~
13 ~~existing exemption that is held because of the accreditation if the~~
14 ~~bureau determines that, on or after January 1, 2003, the~~
15 ~~accrediting entity takes, or has taken, a negative action against~~
16 ~~the institution, against one or more branches of that institution, or~~
17 ~~against any courses or programs of study offered at the~~
18 ~~institution.~~

19 ~~(2) As used in this section, a "negative action" includes, but is~~
20 ~~not necessarily limited to, an action by an accrediting entity that~~
21 ~~constitutes any or all of the following:~~

22 ~~(A) A denial or failure to approve or reapprove the~~
23 ~~accreditation of the institution, branch, or course or program of~~
24 ~~study.~~

25 ~~(B) The granting of conditional approval, probation, or~~
26 ~~improvement-needed status.~~

27 ~~(C) Any other action taken by the accrediting entity against the~~
28 ~~institution or one or more of its branches because of any of the~~
29 ~~following:~~

30 ~~(i) A violation of a law or regulations.~~

31 ~~(ii) A violation of policies of the accrediting agency.~~

32 ~~(iii) Poor performance, fraud, mismanagement, or concealment~~
33 ~~of information.~~

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36 CORRECTIONS:

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